

GUIDELINES IN REVIEWING DONOR GRANT AGREEMENTS

I. Limited Duties and Responsibilities

- a. Consideration of donor's recommendation of grant recipient.
 - i. Should avoid any provision that would give donor a contractual claim against PEF if PEF did not follow donor's recommendation.
 - ii. Agreement should contain affirmative statement that PEF's Board has the *exclusive* authority to make all decisions as to grant recipients.
 - iii. Avoid any language that states or suggests that PEF "*administers*" a donor's contributions, as this suggest PEF is acting as an agent of donor with respect to the donor's contribution.
 - iv. Avoid language which *requires* PEF to return any portion of grant to donor if recommendation not followed. A provision which permits PEF to return funds in PEF's discretion is acceptable.
 - v. Avoid language that ties purpose of grant and grant recipient so closely that purpose cannot be fulfilled without making grant to recommended grantee.
 - vi. Avoid language which places conditions on receiving grant funds that are tied, directly or indirectly, to making grants to recommended grantee.

E.g., avoid provisions that require PEF to notify the donor whether it will make grant to recommended grant recipient as a condition to receiving entire grant immediately, versus receiving grant in installments over multiple years designed to penalize PEF for not following recommendation.
- b. Reporting to donor is limited to identifying grantee, the amount transferred to the grantee and if designated by PEF in its agreement with the grantee, the use of the grant proceeds.
- c. If donor wants a specific report from its recommended grantee, it must provide a form of grant agreement that PEF can execute with the grantee. The form of grant agreement should be attached an exhibit to the donor's grant agreement.
- d. PEF should not agree to conduct a higher level of due diligence with respect to recommended grantee than it currently exercises, i.e., PEF should avoid contractual provisions that require PEF to obtain more information from grantee or exercise additional oversight of grantee than PEF would typically exercise.

II. Representations

- a. Representations should be limited to basic facts about PEF that only PEF is in a position to know.
 - i. Recognized as exempt from income tax by IRS under Section 501(c)(3).
 - ii. Confirming copies of organizational documents and IRS determination letter, provided to donor, are current and true and correct.
 - iii. Confirming copies of IRS Form 990 and audited financials for 3 prior taxable years, provided to donor, are true and correct in all *material* respects.
- b. Avoid making representations as to matters of law and fact that can be determined by an examination of PEF's organizational documents and tax returns provided or otherwise available to donor.
 - i. E.g., PEF is not permitted by law or its organizational documents to distribute its assets to private parties. A donor can make this determination on its own, without PEF making a representation, by examining PEF's organizational documents and understanding 501(c)(3) law.

III. Indemnity Obligation

PEF should not agree to indemnify donor under any circumstance, except that for certain proposed large donations, PEF may wish to consider limited, carefully reviewed indemnity provision.

IV. Governing Law, Venue and No Jury Trial

- a. All grant agreements must be governed by New York law without regarding to conflicts of law principles.
- b. Any dispute shall be brought in the City of New York.
- c. The parties waive the right to a jury trial.

V. No Third-Party Beneficiaries

The grant agreement should contain a provision that explicitly provides that no third-parties, including recommended grantees, are granted any rights under the grant agreement.